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The Denver Bar Association Record

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WE MUST AWAKEN

We were amazed by the recent statement of Judge Butler, chairman of the committee on the "Administration of our Criminal Laws," that twenty-two of slightly more than thirty letters directed to our representative members of the bench and bar went unanswered.

The committee was seeking from lawyers and judges of wide experience their ideas along the lines of the investigation. The committee earnestly sought and merited a response. It was deeply interested in the subject and had worked hard.

Why such lethargy? Was it lack of time, or was it too much trouble? Or was it indifference? This is the worst of all. We must awaken.

WE SOLICIT CONTRIBUTIONS

We want the general impression to get abroad that the Bar Association Record is your Record, and is the official organ of the order, individually and collectively.

We earnestly solicit your contribution. If there is any thought occurs to you that might interest lawyers and the bar generally, set it down. If you run afoul of a timely clipping from somewhere, cut it out and mail it to us. We need and invite the support of all lawyers.

May we not have a literary effusion from some modest member for our April number? Don't be shy! We may thereby uncover some new genius in the field of letters.

TOM WATTERS DIES

Thomas E. Watters, prominent member of the Denver Bar Association, and one of Denver's early day lawyers, died last month at his home, 790 Niagra street, after a brief illness. He was 72 years old.

Mr Watters was admitted to the bar in New York in 1880, and shortly thereafter headed westward, landing in Denver the same year. He had practiced in Colorado since that time.

He was a member of the convention that framed the city charter in 1904, was former president of the Montclair school district, and city attorney there before Montclair was annexed to Denver. He was a Mason and a Shriner.

He is survived by a wife, to whom he was married in Denver in 1885; and by a son and a daughter. He was buried at Rome, N. Y., on Lincoln's birthday.

LINCOLN—ONLY A MAST-FED LAWYER

By Omar E. Garwood

"I am only a mast-fed lawyer," said Abraham Lincoln. Such deprecatory statements from himself, and the endless fund of anecdotes and yarns which have featured him as a witty, carefree jury lawyer, have produced in the public mind a conception of him which has tended to minimize his rank in the profession of law. But that he was an outstanding and able lawyer, and a foremost leader of the Illinois circuit, cannot be denied in the light of recent investigations of court records and private documents, and the testimony of those who lived in the environment where Lincoln did the greater part of his work as a lawyer.

William H. Townsend, of the Lexington, Ky., bar, and Frederick Trevor Hill, have made contributions to the Lincoln literature which are of great interest to lawyers; both based their work on laborious investigations among Illinois court records. now approaching a century in age. They have thus corrected many erroneous popu-

lar notions about Lincoln as a lawyer, and have disclosed many inaccuracies in the work of some of his most prominent biographers. Hill is the only biographer who seems to do Lincoln full justice as a member of the bar. Every lawyer should read Hill's 325-page volume entitled "Lincoln, the Lawyer," and Townsend's "Lincoln, the Defendant," also the American Bar Journal of February, 1924.

The reports of the Illinois Supreme Court, beginning with 3 Illinois, page 356, and ending with 25 Illinois, page 169, contain 172 decisions in cases in which Lincoln appeared as counsel. He won most of them. It is said that no lawyer in Lincoln's time had such a record of important appellate cases. When we add the tremendous amount of trial work he was doing on the old eighth circuit—and he was the only lawyer who made the entire circuit—no one can doubt that he was an industrious, successful lawyer, much sought after by clients and brother lawyers, and entitled to a recognition in his profession greater than has been accorded him by many of his biographers.

His earliest legal work consisted in drawing of deeds and bills of sale, and trying petty cases before Justice Bowling Green. The date of his admission is given as March 24th, 1836. He formed three partnerships—first Stuart & Lincoln, then Logan & Lincoln, then Lincoln & Herndon. Stuart was much in politics. Lincoln was thus left alone to work out his own problems; he never became a legal "brain-tapper;" while he would talk with other lawyers, he made his own decisions, and thus acquired a most valuable self-reliance. Stuart sent him away to try a case for an Englishman named Baddeley, and when Baddeley saw Stuart's substitute, who looked like a rustic on his first visit to a circus, he felt terribly insulted and dismissed Lincoln. Years later, when Lincoln was called into the McCormick patent case at Cincinnati, Stanton snubbed "the long-armed creature from Illinois" — preventing Lincoln from making any argument in the case—to Lincoln's bitter disappointment. This did not, however, prevent Lincoln from placing Stanton in his cabinet.

Judge Stephan Logan was the undoubted leader of the Illinois bar, and the fact that he singled out Lincoln for a partner, when he could have his choice from a wide and able field, shows that Lincoln's legal ability was very highly regarded. It is interesting to note that there are three cases in the 4th Illinois, wherein Lincoln defeated Logan, and this doubtless helped to increase Logan's respect for him. It is believed that Logan's influence was very potent in rounding out Lincoln as a lawyer. Judge David Davis, of the United States Supreme Court, said that Logan was the ablest lawyer he ever met.

Lincoln's longest partnership was with Herndon. He seems to have selected Herndon because he needed an orderly office man, but there was never any system about the Lincoln & Herndon office. Ida Tarbell says that the fee book of this office shows earnings of only $1,500.00 for the year 1847, and Lincoln's income from his practice for the next ten years could not have been more than two or three thousand dollars per annum.

Lincoln was not a distinguished financial success as an attorney, because, unlike Logan, who became well-to-do at the bar, Lincoln's mind did not run in the direction of accumulating large means. His fellow lawyers complained about his low fees, and Judge Davis rebuked him from the bench about it. Still, Lincoln did not hesitate to sue for attorney's fees, as disclosed in numerous instances shown by Mr. Townsend. All the Lincoln literature, however, agrees that he always put the moral side of a law case first, and there is a complete unanimity of opinion that his devotion to truth and justice was his outstanding characteristics, both as lawyer and statesman. The hard years of law must have been the discipline which enabled him to rise from the humblest obscurity to the successful consummation of the most stupendous task any American has ever been called upon to perform. Without his experience as a lawyer, probably he never would have been President.

He spoke thus about the honor of lawyers:

"There is a vague, popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man,

choosing the law for a calling, for a moment yield to the popular belief. Resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave."

Clearness and simplicity of statement contributed greatly to his success as a trial lawyer, and his genius for seeing the real point in a case made him strong in both nisi prius and appellate courts.

His three most important cases were, perhaps, the Illinois Central Case, 17 Illinois, 291, which he won, though he was compelled to sue the railroad to collect his fee; the Rock Island-Mississippi River bridge case, and the McCormick patent case, McClean's United States Reports, Vol. 6, page 539.

It is to be hoped that lawyers will continue to emphasize in the public mind the importance of Lincoln's career as a lawyer, and that he will be given the high place in the annals of our profession which his life and work as a lawyer undoubtedly justify.

A CURIOSITY OF LITIGATION

By Edward Ring

A few years ago an old gentleman frequented the Denver Club who had but one topic of conversation. To any one who would hear his story he confided an experience which had convinced him that a court of law was not, as Blackstone taught, "a place wherein justice is administered," but, "a place where injustice is administered." This was his tale.

He owned property on Lawrence street half-way up the block between Fourteenth and Fifteenth streets. It consisted of one lot, improved with a tall three-story building. The first floor was devoted to business and the upper floors were occupied by a downtown hotel called the Logan House. The Tramway Company, having decided to route its North Denver cars from the Loop through the block on Lawrence street, acquired the title to two lots adjoining the Logan House, and put in its tracks. Then the trouble began! The clanging of gongs and grinding of wheels as they rounded the curve created a perpetual din which lasted all day and far into the night. The owl cars, in fact, kept up an intermittent racket throughout the hours of darkness, which in well-regulated hotels are devoted to sleep. There was an exodus of lodgers from the Logan House, and the proprietor found his business all but ruined by the noisy proximity of the cars.

When the landlord called for his rent the inn-keeper refused to pay the amount stipulated, upon the ground that the property had undergone such a change that he was no longer in possession of the premises named in the lease. The Logan House had lost caste and no longer appealed to its old patrons. It could not be made to pay its former income, and the tenant demanded a heavy discount in the rent. This the landlord refused to concede, and took the issue to the District Court. That tribunal decided that the contention of the tenant was well-founded and that he was no longer in possession of the premises described in the lease. The provisions of the instrument as it stood could not, the Court decided, be enforced under the changed conditions.

The landlord thereupon brought suit against the Tramway Company. With the judgment of the District Court to fortify his claim he believed there was no avenue of escape from the conclusion that his property had suffered heavy damage. The Tramway attorney at that time was Col. A. M. Stevenson. He took the ground that his client far from having damaged property in that section of Denver, had benefited it to a very great extent. That the travel and traffic brought to the section every hour of the day by the streetcars had enhanced the value of real estate, added to the availability of buildings, and created Denver's greatest hive of industry. The busiest section of the city, with its markets, stores, banks, and office buildings, owed its existence to the fact that the Tramway Company had fixed the central point of its system at that place. The District Court held that this contention was substantially true and afforded the Company a valid defense to the claim of the property owner.

To the unfortunate landlord and litigant these decisions seemed hopelessly irreconcilable. To the mind of a lawyer, however, both conclusions seem justified by the facts, and the story certainly presents a curiosity of litigation.

LAW AS ADMINISTERED IN ENGLAND

Henry H. Clark

Justice is administered in the English courts in much the same way as it is in the courts of this country. The differences are the minor differences of form, of environment and of tradition, rather than of substance. These minor differences are interesting and impressive, tending to maintain the dignity of the Court, respect for the law, and to aid in its orderly administration.

But the Judge—"His Lordship," in his wig and robes of office is just as human as our judges of the sack coat; the barristers in their wigs and gowns are no better looking and no worse than the lawyers who frequent our local courts, and like our advocates are convincing, clever and successful, or unconvincing, stupid and failures, as the case may be. The witnesses tell their stories pretty much as witnesses do in our courts only they are required to stand while testifying, and they suffer fewer interruptions from counsel and have fewer limitations placed upon their evidence. The solicitors, who sit in the pit of the Court room (in civil cases,) immediately below the seats reserved a step higher and behind them for senior counsel, are to all intents and purposes just like our assistant or associate counsel—except that they have the disadvantage of having to turn in their seats and whisper their suggestions to the leading counsel, immediately behind. The junior counsel, if there is one (as there must be for every King's Counsel), sits behind the senior counsel one step higher on the Court room floor, and examines witnesses, or refrains from examining them, as the leading counsel may direct. The Clerk of the Court also bewigged (and usually a barrister himself), does pretty much the same kind of work, only less aggressively perhaps, than our Clerks of the Court. The newspaper reporters function pretty much as our reporters do—jotting down only those incidents of the trial which may be humorous, sensational, or tragic, and suitable for newspaper exploitation.

But from the time the case commences, whether it be a civil or criminal matter, the trial proceeds in a quiet, unemotional and in an easy going way—but always progressively and with the substance of the controversy ever in view, until the end is reached. There are no pyrotechnics on the part of counsel, no prancing up and down any open space (for there is none) in addressing the jury. Every counsel remains standing in his exact place while speaking. No false issues are raised, no false alarms are sounded. Law books are very seldom used. The judge, as well as opposing counsel, is presumed to know the law, and if it is mis-stated one or the other will quickly correct the speaker. Books are only resorted to when someone is under a misapprehension as to what they contain, for there is only one body of law to draw from or refer to. Uniform courtesy and good humor is always the rule of conduct. Often his Lordship and the counsel will indulge in a little friendly tilt, a play on words, one tripping the other up as it were, but only in passing. The underlying rules of evidence are much the some as ours, the substance law is not vastly different, the way of looking at things is identical, i. e., from the standpoint of the right or wrong of the matter, and its moral aspect, this is true of the administration of the law in all English speaking nations. They not only speak the same language, they think alike, they have the same moral sense, they want to do right as between man and man, and they have a common heritage and a common tradition—the Common Law of England.

But in England there is less trifling with justice, fewer delays, shorter cuts all down the line (in pleadings especially, and in the admission or exclusion of evidence.) A jury is selected in a few minutes in the majority of cases. No barrister would dare to challenge a juror because he had read a newspaper, or because he had heard someone discuss a matter that was on everyone's tongue, or because he might—from what he had read or heard—formed some opinion. Ignoramuses are not considered ideal jurymen in the English courts by either side.

The evidence is produced in an orderly and progressive way. There are no by-plays to the jury. The counsel are all known to the judge and no one would venture outside of the realm of the recognized proprieties. Any slight indiscretion on the lawyer's part will bring forth a decisive but courteous rebuke from the judge. Yet

nothing seems to be overlooked. Every scrap of evidence seems to be brought out by counsel on one side or the other and if not by them then by the Judge.

If in a criminal case the accused is found guilty he expects to be punished. And he is punished. There is no time wasted any where down the line from the day of his arrest until, if he is a murderer, he is "hung by his neck until he is dead." If any appeal is taken it is taken to the Court of Appeals, and it is soon decided. If, as a last resort, an appeal is made to the Home Secretary for executive clemency, he also conducts an inquiry, but unless there has clearly been a miscarriage of justice he will not interfere. The courts are there to administer justice and the Home Secretary will not assume to set aside their mandate, except in the case stated, or where there is some outside and very important element to be considered which would appeal to the humanity of all right thinking people. Not only those charged with law enforcement, but the people generally believe in punishment for the guilty. The worse the crime the more severe the penalty. Murder calls for the death sentence, not for flowers, sweets, sentiment or pardons.

There were two noted murder cases tried in London during the summer. One was that of Mahon, an Englishman, and the other Vaquier, a Frenchman. Both were tried, convicted and hung, all within a few weeks of the time of the commencement of their respective trials. French advocates came over and by courtesy were permitted to aid in Vaquier's defense. After he was convicted an appeal taken, heard and disallowed. The Home Secretary, with whom is lodged the pardoning power, refused to interfere. The only question for him to consider was: "Did the accused have a fair trial in every respect?" In Paris, while talking with a prominent business man, I asked him for the French point of view on this famous case. "Ah, Monsieur Clark," he said, "In France we know that he had a fair trial, and we also know that when the English court found him guilty, he was guilty."

In England, no one understands how it became possible for the Chicago judge to pass less than the death sentence on the two bestial and brutal murderers of the Frank boy. To the English people such a result of a murder trial is absolutely incomprehensible. Is it to be wondered at that crime is less rampant in the British Isles than it is in a country where forty-eight governors can exercise executive clemency, and so very often avail themselves of their opportunity for so doing—entirely without regard to the question of a man's guilt or innocence?

There is notoriously less crime in the British Isles (with over thirty millions of people) in any year than occurs in New York or Chicago in any like period. Is it that human nature is worse and more addicted to crime here than there? I think not. It is in the administration of the law that the explanation is to be found. Our diverse criminal laws, as established by forty-eight different and sovereign states; the delays in administering justice, the pyrotechnics that accompany the majority of trials; the false issues that are raised; the technicalities upon which appeals may be based, and lastly the reckless and sentimental use of the pardoning power by the state executives, in more or less futile attempts to reform the guilty (after conviction instead of before), with no attempt to compel reparation to the wronged and injured or to extend financial or other aid to the bereaved.

The trial judges of the King's Bench are selected and appointed for their eminent fitness. They are appointed for life. They are not only presumed to know the law, but generally speaking they do know it. They are paid $25,000.00 per annum. A bill was recently introduced in parliament to increase this stipend. Our Colorado trial judges receive the munificient sum of $4,000.00 per annum, less their election assessments, and the continuing round of contributions to public or private charities, to say nothing of taxes and income taxes.

English law is no respector of persons. An English newspaper in a four-line note records that "the appeal of Viscount Curzon, M. P., at the Middlesex Quarter Sessions on Monday against a fine of 20 pounds, and the suspension of his motor-driving license for six months for having exceeded the speed limit in Chiswick High-road on March 9, was dismissed, with costs." Fancy what the New York newspapers would do in "headline-stuff" if this should happen here, say, to Secretary Hughes!

SENATOR CHARLES S. THOMAS' OLD TIMERS SPEECH

(Continued from last month)

"You promised that I should be notified." The court denied any agreement. Mr. Cavanaugh told the court that he was a liar and challenged him for a duel; the court declined, and Cavanaugh posted him as a liar and a coward, by large posters stuck up in many public places in Central City. Nothing further came of it and the judge soon after left. These posters are still in existence.

In another case in Georgetown, a litigant wanted his case continued, but was denied. He then applied for a change of venue and that was granted. The venue was changed to Gilpin county. The legislature was then in session, the litigant went to that body, had a bill presented to change the time of holding court in Gilpin county so as to make it several months later. The bill was passed, and so the case was continued.

There was great interest shown in the noted Dives and Pelican suit in Georgetown, and several men lost their lives during the litigation; threats of killing on each side were many, almost every one of the men prominent in the litigation was threatened, lawyers, agents and even judges, so that Judge Belford who was trying the case found it necessary to carry a gun, and when court was opened the gun was left with the clerk.

In the settlement of these mining cases much skill from both lawyers and judges was necessary and their judgment has nearly always been taken as correct. They were settled by such judges and lawyers as Judge Hallett, Senator Teller, Thomas Hughes, Patterson and Judge Symes, father of our present United States District Judge, and many other eminent men. Only one important question has been overruled after having been determined otherwise by all the other mining states, and that is the question of the "space of intersection," which was afterwards overruled when a judge at Colorado Springs declined to follow it, and the Supreme Court, speaking by Judge Gabbert, overruled its former decision.

In the 70's when the Colorado Central (now C. & S.) Railroad was being built, some question arose in which the railroad company anticipated an adverse decision by the district judge in Boulder. To avoid this, a party of men took the judge from the train enroute to Boulder, took him into the mountains, kept him a prisoner for a few days, and so prevented the adverse action. The judge was treated well, had everything necessary for his comfort except his personal liberty. The affair was never investigated and the matter was dropped.

TOO MANY LAWS

By Associated Press

New York.—Americans are more law-ridden than were the Russians under their czars or the Turks under their sultan, said former Senator Beveridge of Indiana, in speaking tonight at a dinner commemorating the 124th anniversary of John Marshall's appointment as chief justice of the United States Supreme Court.

The Lawyers' club and the Association of the Bar of the City of New York gave the dinner at the club's headquarters in the Hotel Astor. Mr. Beveridge and Edwin S. Corwin, professor of jurisprudence at Princeton university, were the chief speakers.

The dinner committee included Secretary of State Hughes, Alton B. Parker, Samuel Seabury, Charles D. Hills, Morgan J. O'Brien and James A. O'Gorman. Judges of the United States Circuit Court of Appeals were among the guests.

Flays Law Administration

Robert C. Morris, president of the Lawyers' Club, lauded the career of Chief Justice Marshall as that of "a worthy expounder of the constitution," who was "sent by providence" and who "enunciated the great principles of constitutional construction which have become as much a part of the constitution as though incorporated therein by the written words of the people themselves."

Mr. Beveridge asserted that the United States was overburdened by federal, state and local legislation. Administration of the laws, he said, has become "peremptory, insolent and autocratic," until officials have become vexatious tyrants and citizens have become cringing subjects.

"The nation and every state are wellnigh smothered with multitudes of laws," said the speaker. "No human being knows even how many statutes

are hidden within the forbidding covers of the thousands of volumes that contain acts of congress and the legislatures. No human being knows even the number of city ordinances, much less the purport of them.

"The country will be better off if, for every new law passed, an old law were repealed. We complain of lawlessness, but is not excess legislation a basic cause of lawlessness? How can anybody obey every law when nobody knows or can know how many laws there are or what they command or forbid?

Cannot Be Enforced

"It has come to pass that the mass of American legislation is restrictive. We boast that ours is the land of liberty, yet the American people are, by law, forbidden to do more things than was the case in Russia under the czar or Turkey under the sultan."

Not only the numbers of laws and the "whimsical and arbitrary enforcement of them," but also the nature of many of them is in defiance of human nature and the spirit of free institutions, said Mr. Beveridge.

"Some of the ten commandments have been put on our statute books, as they should be," he continued. "But others cannot be legislated or enforced by any device of human government. You cannot force children to reverence parents; you cannot prevent covetousness or create altruistic love.

"The Sermon on the Mount is the final word in moral duty and noble living, yet there is not a line of it that can be put into human law, with a policeman behind it. But the preacher, if he is on the job, can put into the souls of men that which legislators cannot. The church cannot abdicate its mission and assume the task of the state without ruining both."

THE CYNIC

The following extract from the will of a Wall Street man came to my notice lately. It would seem to be worthy of publication in the Record.

"To my wife I leave her lover and the knowledge that I wasn't the fool she thought I was.

"To my son I leave the pleasure of earning a living. For thirty-five years he has thought the pleasure was mine. He was mistaken.

"To my daughter I leave $100,000. She will need it. The only good piece of business her husband ever did was to marry her.

"To my valet I leave the clothes that he has been stealing from me regularly for the past ten years. Also my fur coat that he wore last winter when I was South.

"To my chauffeur I leave my cars. He almost ruined them and I want him to have the satisfaction of finishing the job.

"To my partner I leave the suggestion that he take some other clever man in with him at once if he expects to do any business." The Docket.

THE STUDY OF EFFICIENCY IN BUSINESS

Manufacturers, contractors and business men generally, for years have been studying methods with a view to eliminating unnecessary effort and consequent extra expense. They have taken moving pictures as an aid to this study and have developed specialists known as efficiency engineers. After a study of this kind some years ago, the National City Bank of New York determined to eliminate the messenger system within the bank. Pneumatic tubes were substituted. Today in looking down on the banking floor from the gallery, the observer would think that the bank was doing little business because he sees no such hurry and bustle as he observes in other banks. The business is being done but in a quieter, more effective way than when hurrying messenger boys ran in every direction. So lawyers might with profit employ efficiency engineers to eliminate unnecessary effort in their offices and thereby affect a great saving.

The profession can regain much that it has lost in the confidence of the public if it will establish business methods and business systems and deal with questions submitted to them less as professors of law and more as business men, learned in law to be sure, but in business as well.

THE DENVER BAR ASSOCIATION

RECORD

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Report of Nominating Committee

"In the selection of candidates, the sole consideration of your Committee on Nomination of Officers was to find men who would carry on the active work of this Association and extend some of the constructive work which the Association has started during the past year.

The test applied in making these selections was past performance in the work of the Association.

After a careful canvass the Committee feels that each of the nominees has, by his record in the Association, qualified for the office for which he is named.

The action of the Committee is unanimous in making the following nominations:

President.....**Charles C. Butler**

First Vice-President.....**Henry McAllister, Jr.**

Second Vice-President.....**Robert W. Steele, Jr.**

Trustees.....**Charles R. Brock, B. C. Hilliard**

Respectfully submitted,

WILBUR F. DENIOUS,
FRANK N. BANCROFT,
RICHARD S. FILLIUS,
CARL WHITEHEAD,
THOMAS WOODROW,
Committee."

Editor's Note: Further nominations may be made in accordance with our by-laws, a copy of which is printed herein.